

1 application for a period of disability and disability insurance
2 benefits, alleging disability beginning October 21, 2005. Tr. 12;
3 135. In her application for benefits, Plaintiff reported that she
4 stopped working due to PTSD, anxiety, paranoia, and memory loss.
5 Tr. 139. Her claim was denied initially and on reconsideration, and
6 Plaintiff requested an administrative hearing. Tr. 55-114. A video
7 hearing was held on April 16, 2010, with Plaintiff appearing in
8 Yakima, Washington, and ALJ Kim D. Parrish presiding in Oklahoma
9 City, Oklahoma. Tr. 12; 28. At the hearing, medical expert Sandra
10 K. Saffran, Ph.D., ARNP, vocational expert Scott Witmer, and
11 Plaintiff, who was represented by counsel, testified. Tr. 28-54.
12 The instant matter is before this court pursuant to 42 U.S.C. §
13 405(g).

14 **STATEMENT OF THE CASE**

15 The facts of the case are set forth in detail in the transcript
16 of proceedings and are briefly summarized here. At the time of the
17 administrative hearing, Plaintiff was 47 years old and living with
18 her mother. Tr. 31-32. She finished high school and attended
19 college for one year. Tr. 31. Plaintiff has three adult children.
20 Tr. 36. Her past work includes sales route driver, and
21 administrative clerk. Tr. 50.

22 Plaintiff's mother does all the grocery shopping, food
23 preparation, and managing of Plaintiff's finances. Tr. 45.
24 Plaintiff testified that her usual day is spent sitting in the
25 living room visiting with her mother or other family members, and
26 sitting on the porch. Tr. 36. She described her hobbies as playing
27 with her grandchildren when they visit her mother's home. Tr. 41.

28 Plaintiff said she suffers from frequent nightmares and panic

1 attacks, and all the time she feels "anxious, shaky, scared to
2 death." Tr. 42. When the ALJ asked Plaintiff what would happen if
3 she were to get in a vehicle and drive to a workplace, Plaintiff
4 responded, "I would shake and tremble and be confused and afraid I
5 would die. And my mind just goes and I can't stop it and I just
6 have to run home." Tr. 33.

7 Plaintiff's treating psychiatric nurse practitioner and
8 clinical psychologist Sandra K. Saffran, Ph.D., ARNP, testified at
9 the hearing. Tr. 43-50. Dr. Saffran² has treated Plaintiff since
10 October, 2005, and diagnosed Plaintiff with Post Traumatic Stress
11 Syndrome, Provisional Bipolar Disorder II with psychotic features,
12 Provisional Obsessive Compulsive Disorder, Depression NOS, and
13 General Anxiety Disorder, Alcohol Dependence - full remission. Tr.
14 43; 283. Dr. Saffran testified that Plaintiff spends her days
15 hyper-vigilant, where she is in a constant state of fight or flight.
16 Tr. 44. Dr. Saffran also explained that Plaintiff's lack of
17 insurance limits the medications she can prescribe for Plaintiff due
18 to cost. Tr. 44; 48. Dr. Saffran noted that Plaintiff is not
19 eligible for assistance with paying for her prescriptions, and
20 obtaining the proper medication was a necessary element to returning
21 Plaintiff to work: "I believe with the right medication, frequent
22 counseling, the support that she has in her family, that [would] at
23

24 ²The ALJ's repeated reference to "Ms. Saffran" is
25 inappropriate. Regardless of the ALJ's beliefs about whether Dr.
26 Saffran maintained a license with the State, she earned a doctorate
27 degree and thus should be addressed with the proper honorific
28 "Doctor."

1 some point and time ... get her back to being a functional person
2 and to ... be able to work again." Tr. 48.

3 **ADMINISTRATIVE DECISION**

4 At step one, ALJ Parrish found Plaintiff had not engaged in
5 substantial gainful activity since October 21, 2005, the alleged
6 onset date. Tr. 14. At step two, he found Plaintiff had the
7 following severe impairments: anxiety disorder; personality
8 disorder; and, history of alcohol abuse, in sustained remission.
9 Tr. 14. At step three, the ALJ determined Plaintiff's impairments,
10 alone and in combination, did not meet or medically equal one of the
11 listed impairments in 20 C.F.R., Subpart P, Appendix 1(20 C.F.R.
12 416.920(d), 416.925 and 416.926). Tr. 14. The ALJ found Plaintiff
13 has the Residual Functional Capacity ("RFC") to perform a full range
14 of work at all exertional levels with the following non-exertional
15 limitations: "[T]he claimant requires work in relative isolation
16 with limited contact with peers, supervisors, and the general
17 public. The claimant is able to sustain concentration necessary for
18 unskilled work." Tr. 16.

19 In step four findings, the ALJ found Plaintiff's statements
20 regarding pain and limitations were not credible to the extent they
21 were inconsistent with the RFC findings. Tr. 20. The ALJ found
22 that Plaintiff could not perform her past relevant work. Tr. 21.
23 After considering Plaintiff's age, education, work experience, and
24 residual functional capacity, the ALJ concluded jobs exist in
25 significant numbers in the national economy that the Plaintiff can
26 perform, such as weight tester, linen grader, and wrapper. Tr. 22.

27 **STANDARD OF REVIEW**

28 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the

1 court set out the standard of review:

2 A district court's order upholding the Commissioner's
3 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,
4 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the
5 Commissioner may be reversed only if it is not supported
6 by substantial evidence or if it is based on legal error.
7 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
8 Substantial evidence is defined as being more than a mere
9 scintilla, but less than a preponderance. *Id.* at 1098.
10 Put another way, substantial evidence is such relevant
11 evidence as a reasonable mind might accept as adequate to
12 support a conclusion. *Richardson v. Perales*, 402 U.S.
13 389, 401 (1971). If the evidence is susceptible to more
14 than one rational interpretation, the court may not
15 substitute its judgment for that of the Commissioner.
16 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*
17 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

18 The ALJ is responsible for determining credibility,
19 resolving conflicts in medical testimony, and resolving
20 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
21 Cir. 1995). The ALJ's determinations of law are reviewed
22 *de novo*, although deference is owed to a reasonable
23 construction of the applicable statutes. *McNatt v. Apfel*,
24 201 F.3d 1084, 1087 (9th Cir. 2000).

25 It is the role of the trier of fact, not this court, to resolve
26 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence
27 supports more than one rational interpretation, the court may not
28 substitute its judgment for that of the Commissioner. *Tackett*, 180
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
Nevertheless, a decision supported by substantial evidence will
still be set aside if the proper legal standards were not applied in
weighing the evidence and making the decision. *Browner v. Secretary*
of Health and Human Services, 839 F.2d 432, 433 (9th Cir. 1988). If
substantial evidence exists to support the administrative findings,
or if conflicting evidence exists that will support a finding of
either disability or non-disability, the Commissioner's
determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-
1230 (9th Cir. 1987).

1 **SEQUENTIAL PROCESS**

2 The Commissioner has established a five-step sequential
 3 evaluation process for determining whether a person is disabled. 20
 4 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.
 5 137, 140-42 (1987). In steps one through four, the burden of proof
 6 rests upon the claimant to establish a prima facie case of
 7 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99.
 8 This burden is met once a claimant establishes that a physical or
 9 mental impairment prevents him from engaging in his previous
 10 occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a
 11 claimant cannot do his past relevant work, the ALJ proceeds to step
 12 five, and the burden shifts to the Commissioner to show that (1) the
 13 claimant can make an adjustment to other work; and (2) specific jobs
 14 exist in the national economy which claimant can perform. *Batson v.*
 15 *Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004).
 16 If a claimant cannot make an adjustment to other work in the
 17 national economy, a finding of "disabled" is made. 20 C.F.R. §§
 18 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

19 **ISSUES**

20 Plaintiff contends that the ALJ erred by: (1) finding her
 21 testimony was not credible; (2) improperly rejecting the opinions of
 22 Plaintiff's treating and examining medical providers; (3) improperly
 23 rejecting lay witness testimony; and (4) failing to meet his step
 24 five burden. ECF No. 19 at 2.

25 **A. Credibility**

26 Plaintiff contends that the ALJ erred by failing to provide
 27 clear and convincing reasons for rejecting her subjective
 28 complaints. ECF No. 19 at 15. For the ALJ to reject the claimant's

1 complaints, he must provide "specific, cogent reasons for the
2 disbelief." *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
3 1990); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). Once the
4 claimant produces medical evidence of an underlying impairment, the
5 ALJ may not discredit the claimant's testimony as to subjective
6 symptoms merely because they are unsupported by objective evidence.
7 *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991); see also
8 *Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986)("it is improper
9 as a matter of law to discredit excess pain testimony solely on the
10 ground that it is not fully corroborated by objective medical
11 findings"). Unless affirmative evidence exists establishing that
12 the claimant is malingering, the ALJ's reasons for rejecting the
13 claimant's testimony must be "clear and convincing." *Swenson v.*
14 *Sullivan*, 876 F.2d 683, 687 (9th Cir. 1989). General findings are
15 insufficient; the ALJ must identify what testimony is not credible
16 and what evidence undermines the claimant's complaints. *Dodrill v.*
17 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993); *Varney v. Secretary of*
18 *Health and Human Services*, 846 F.2d 581, 584 (9th Cir. 1988).

19 In this case, the ALJ did not make an express finding regarding
20 whether Plaintiff was malingering.³ However, the ALJ found that
21 Plaintiff was not credible and provided the following explanation:

22 While the claimant complains of severe symptoms, it does
23 not seem reasonable to conclude from the minimal findings

24 ³The ALJ noted the record contains a report from examiner Jay
25 M. Toews, Ed.D., who opined that despite Plaintiff's performance on
26 the objective medical tests, Plaintiff "did not appear to give
27 maximal effort," and "her scores appeared to reflect conscious
28 deception, distortion, and/or malingering." Tr. 18; 150.

1 in evidence that such could be the basis for the degree
2 alleged [sic]. She does not appear to be experiencing
3 progressive physical deterioration which might be expected
4 when there are intense and continuous symptoms. Likewise,
5 the claimant's routine does not appear restricted by her
6 alleged disability; but, rather by choice. The severity
7 of the claimant's symptoms does not appear to be of the
8 frequency and duration to be disabling.

9 Tr. 20.

10 While it is not clear from the ALJ's wording, it appears the
11 ALJ's first reason for discounting credibility is that the evidence
12 reveals "minimal findings" that do not support the degree of
13 impairment that Plaintiff alleges. As stated earlier, once the
14 claimant produces objective medical evidence of an underlying
15 impairment, an ALJ may not reject a claimant's subjective complaints
16 based solely on a lack of objective medical evidence to fully
17 corroborate the alleged severity of pain. *Cotton*, 799 F.2d at 1407;
18 SSR 96-7p. In this case, the ALJ provided two additional reasons for
19 discrediting Plaintiff's testimony, but as discussed below, neither
20 reason was valid.

21 The ALJ's second reason for discounting credibility is that
22 Plaintiff "does not appear to be" physically deteriorating. Tr. 20.
23 As Plaintiff points out, the ALJ's reasoning is vague, and he fails
24 to identify supporting evidence in the record. ECF No. 19 at 15-16.
25 Additionally, as Plaintiff also pointed out, the ALJ failed to
26 provide rationale that explains how physical deterioration
27 establishes the existence of mental disabilities. ECF No. 19 at 16.
28 A review of the record reveals no evidence or authority that
supports the ALJ's reasoning. Thus, this reason is not supported by
substantial evidence.

The ALJ's final reason for discounting Plaintiff's credibility

1 is that Plaintiff's "routine does not appear restricted by her
2 alleged disability; but, rather by choice." Tr. 20. Again, the ALJ
3 fails to provide the necessary specific analysis with citation to
4 the record to support his conclusion, and thus this reason is
5 legally insufficient. Moreover, the record does not indicate
6 Plaintiff's limitations related to her ability to leave her home are
7 simply a willing choice. Instead, the evidence reveals opinions of
8 Dr. Saffran and lay witnesses that explicitly contradict the ALJ's
9 conclusion. See, e.g., Tr. 44; 46; 209-45; 283-89. In the absence
10 of supporting substantial evidence, the ALJ's third reason for
11 discounting Plaintiff's credibility is legally insufficient.

12 When the court finds one or more of an ALJ's reasons supporting
13 an adverse credibility finding invalid, the court determines whether
14 the ALJ's reliance on such reasons was harmless error. See *Batson*,
15 359 F.3d at 1195-97 (applying harmless error standard where one of
16 the ALJ's several reasons supporting an adverse credibility finding
17 was held invalid). In this case, however, the ALJ failed to provide
18 a single specific, valid reason for discounting Plaintiff's
19 credibility. As a result, the errors in the credibility analysis
20 are not harmless, and require remand for a proper evaluation of
21 Plaintiff's credibility.

22 **B. Medical Opinions**

23 Plaintiff contends that the ALJ erred by rejecting the opinions
24 of Sandra Saffran, Ph.D., ARNP. ECF No. 19 at 4-15. The ALJ
25 concluded that because Dr. Saffran does not have a current license
26 to practice psychology, she is not an "acceptable medical source."
27 Tr. 20. The ALJ declared that "only acceptable medical sources can
28 be entitled to controlling weight," and, thus, Dr. Saffran's opinion

1 was "given some consideration, but not great or controlling weight."
2 Tr. 20. Assuming, without deciding, that Dr. Saffran is properly
3 considered an "other source" under the SSA regulations, the ALJ's
4 reasoning applied to weighing her opinion is legally incorrect. In
5 certain circumstances, an unacceptable medical source opinion is
6 entitled to greater weight than the accepted medical source opinion:

7 [D]epending on the particular facts in a case, and after
8 applying the factors for weighing opinion evidence, an
9 opinion from a medical source who is not an "acceptable
10 medical source" may outweigh the opinion of an "acceptable
11 medical source," including the medical opinion of a
12 treating source. For example, it may be appropriate to
give more weight to the opinion of a medical source who is
not an "acceptable medical source" if he or she has seen
the individual more often than the treating source and has
provided better supporting evidence and a better
explanation for his or her opinion.

13 SSR 06-3p. The ALJ failed to understand that Dr. Saffran's opinion
14 was entitled to greater weight than the opinion of one-time
15 examining physician Jay M. Toews, Ed.D., if Dr. Saffran saw
16 Plaintiff more often than Dr. Toews, and if through her notes,
17 letter and hearing testimony, she provided better supporting
18 evidence and explanation of her opinion. Because the ALJ
19 misapprehended the law related to unacceptable medical sources,
20 remand is required for the ALJ to reconsider and provide a legally
21 sufficient analysis of the medical opinion evidence.

22 **C. Lay witness testimony**

23 The Plaintiff contends that the ALJ erred by rejecting the lay
24 witness opinions. ECF No. 19 at 17. Disregard of the testimony of
25 friends and family members in an SSA disability proceeding violates
26 20 C.F.R. § 404.1513(e)(2)(1991). *Sprague*, 812 F.2d at 1232;
27 *Dodrill*, 12 F.3d at 918. The ALJ must consider observations by
28 nonmedical sources about how impairments affect a claimant's ability

1 to work. See 20 C.F.R. § 404.1513(e)(2). Specifically, the ALJ is
2 required to consider lay witness evidence in cases where a claimant
3 alleges pain or other symptoms that are not supported by medical
4 evidence in the file, the ALJ "shall obtain detailed descriptions of
5 daily activities by directing specific inquiries about the pain and
6 its effects to . . . third parties who would be likely to have such
7 knowledge." SSR 88-13. An ALJ is required to give "full
8 consideration" to such evidence. *Id.* The ALJ can reject the
9 testimony of lay witnesses only by providing reasons "germane" to
10 each witness whose testimony is rejected. *Dodrill*, 12 F.3d at 919.

11 The ALJ rejected the lay opinions in this case for three
12 reasons: (1) the family members "are not medically trained to make
13 exacting observations" related to Plaintiff's symptoms and therefore
14 "the accuracy of the statements is questionable"; (2) the lay
15 witnesses are family members and therefore they are not
16 "disinterested third parties"; and (3) the statements "are simply
17 not consistent with the preponderance of the evidence." Tr. 21.

18 **1. Lack of medical training**

19 The first reason the ALJ gave for rejecting the lay testimony
20 was that the witnesses lacked medical training: "Since these family
21 members are not medically trained to make exacting observations as
22 to dates, frequencies, types and degrees of medical signs and
23 symptoms, or of the frequency or intensity of unusual moods or
24 mannerisms, the accuracy of the statements is questionable." Tr.
25 21.

26 The ALJ's disregard of the lay testimony because the witnesses
27 lack medical training violates the regulation requiring an ALJ to
28 consider observations by non-medical sources. *Sprague*, 812 F.2d at

1 1232 (citing 20 C.F.R. § 404.1513(e)(2)); see also *Regennitter v.*
2 *Commissioner of Social Sec. Admin.*, 166 F.3d 1294, 1298 (9th Cir.
3 1999) (recognizing that lay witnesses are of "particular value"
4 because they can testify to claimant's everyday activities). In
5 offering the reports, Plaintiff's two sisters and mother were not
6 attempting to present expert opinion or medical findings as to the
7 extent of Plaintiff's disability or her ability to work. Instead,
8 the lay witnesses were reporting their own respective observations
9 of Plaintiff's limitations. The value of this type of lay testimony,
10 particularly that of family members, is well established. See
11 *Smolen v. Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996) (ALJ must
12 consider the testimony of lay witnesses where the claimant's alleged
13 symptoms are unsupported by medical records). The ALJ's reliance
14 upon this reason for rejecting the lay witness testimony was error.

15 **2. Family members**

16 The second reason the ALJ gave for rejecting the testimony of
17 Plaintiff's family members was that the testimony was from "family
18 witnesses" who were essentially biased. Tr. 21. This reasoning
19 constitutes a "wholesale dismissal of the testimony of all the
20 witnesses as a group and therefore does not qualify as a reason
21 germane to each individual who testified." *Smolen*, 80 F.3d at 1289.
22 "The fact that a lay witness is a family member cannot be a ground
23 for rejecting his or her testimony." *Id.* Testimony from lay
24 witnesses who see the claimant daily is of particular value, and
25 such lay witnesses will often be family members. *Id.*; see *Dodrill*,
26 12 F.3d at 919. It was error for the ALJ to dismiss the lay
27 testimony because the witnesses were family members.

28 **3. Inconsistent with preponderance of the evidence**

1 The final reason the ALJ gave for rejecting the lay testimony
2 was the lay witness statements "are simply not consistent with the
3 preponderance of the evidence in this case." Tr. 21. If an ALJ
4 disregards the testimony of a lay witness, the ALJ must provide
5 reasons "that are germane to each witness." *Bruce v. Astrue*, 557
6 F.3d 1113, 1115 (9th Cir. 2009) (ALJ disregarding lay witness
7 testimony must provide germane and specific reasons for each
8 witness). Further, the germane reasons must be specific. *Stout v.*
9 *Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)("the
10 ALJ, not the district court, is required to provide specific reasons
11 for rejecting lay testimony"). In this case, the ALJ's general
12 reference to the lay testimony as "not consistent with the
13 preponderance of the evidence" is too vague to constitute even a
14 "germane" reason for discounting the statements and comments of
15 plaintiff's lay witnesses in light of the details the witnesses
16 provided related to Plaintiff's symptoms and functioning. The ALJ
17 is directed on remand to reevaluate the lay witness testimony using
18 proper factors.

19 CONCLUSION

20 Having reviewed the record and the ALJ's findings, the court
21 concludes the ALJ's decision is not supported by substantial
22 evidence and is based on legal error. The ALJ's reasons for
23 discrediting Plaintiff's subjective symptom testimony, the medical
24 source opinions, and the lay testimony were legally insufficient.
25 On remand, the ALJ shall evaluate and explain the weight given to
26 the opinions of the medical sources and lay witnesses, and, if
27 necessary, provide legally sufficient reasons for rejecting the
28 opinions. Additionally, the ALJ will evaluate Plaintiff's

1 credibility and specifically identify the testimony, if any, that is
2 not credible or that undermines Plaintiff's subjective complaints.
3 Finally, the ALJ will reevaluate his determination at step four and
4 if necessary, make new step five findings. The decision is
5 therefore **REVERSED** and the case is **REMANDED** for further proceedings
6 consistent with this opinion. Accordingly,

7 **IT IS ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is
9 **GRANTED** and the matter is **REMANDED** to the Commissioner for
10 additional proceedings.

11 2. Defendant's Motion for Summary Judgment, **ECF No. 23**, is
12 **DENIED**;

13 3. An application for attorney fees may be filed by separate
14 motion.

15 The District Court Executive is directed to file this Order and
16 provide a copy to counsel for Plaintiff and Defendant. Judgment
17 shall be entered for Plaintiff, and the file shall be **CLOSED**.

18 DATED July 26, 2013.

19
20 S/ CYNTHIA IMBROGNO
21 UNITED STATES MAGISTRATE JUDGE
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